

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CYTOLOGIX CORPORATION,

Plaintiff,

v.

VENTANA MEDICAL SYSTEMS, INC.,

Defendant.

Civil Action No. 04-11783 (RWZ)

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FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

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For its First Amended Complaint, Plaintiff alleges:

PARTIES

1. Plaintiff CytoLogix Corporation (“CytoLogix”) is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and having a place of business at 99 Erie St., Cambridge, Massachusetts 02139.

2. Defendant, Ventana Medical Systems, Inc. (“Ventana”), upon information and belief, is a corporation organized and existing under the laws of the State of Delaware, having a place of business at 3865 North Business Center Drive, Tucson, Arizona 85705.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

4. Ventana is subject to personal jurisdiction in this District because, upon information and belief, Ventana is doing and has done substantial business in this District.

5. Venue is proper in this judicial District pursuant to 28 U.S.C. § 1400(b).

### COUNT I - INFRINGEMENT OF THE '261 PATENT

6. CytoLogix incorporates and realleges the allegations of paragraphs 1 through 5 as if fully set forth herein.

7. CytoLogix is the owner by assignment of United States Patent No. 6,541,261 B1 entitled, "Method Using a Slide Stainer With Independent Slide Heating Regulation" ("the '261 patent") that was duly and legally issued by the United States Patent and Trademark Office to Steven A. Bogen, et al. on April 1, 2003. A copy of the '261 patent is attached as Exhibit A to this First Amended Complaint.

8. Ventana has infringed one or more claims of the '261 patent, including without limitation claim 1 of the '261 patent, by making, using, selling and/or offering to sell infringing systems, including without limitation its BenchMark® XT slide preparation system. Ventana has also infringed the '261 patent contributorily and by inducing others to infringe and will continue to do so unless enjoined therefrom by this Court.

9. Ventana's infringement of the '261 patent is, upon information and belief, willful.

### COUNT II - INFRINGEMENT OF THE '773 PATENT

10. CytoLogix incorporates and realleges the allegations of paragraphs 1 through 5 as if fully set forth herein.

11. CytoLogix is the owner by assignment of United States Patent No. 6,783,733 B2 entitled, "Random Access Slide Stainer with Independent Slide Heating Regulation" ("the '733 patent") that was duly and legally issued by the United States Patent and Trademark Office to

Steven A. Bogen, et al. on August 31, 2004. A copy of the '733 patent is attached as Exhibit B to this First Amended Complaint.

12. Ventana has infringed one or more claims of the '733 patent, including without limitation claim 1 of the '733 patent, by making, using, selling and/or offering to sell infringing systems, including without limitation its BenchMark® XT slide preparation system. Ventana has also infringed the '733 patent contributorily and by inducing others to infringe and will continue to do so unless enjoined therefrom by this Court.

13. Ventana's infringement of the '733 patent is, upon information and belief, willful.

#### PRAYER FOR RELIEF

WHEREFORE, CytoLogix prays:

1. That this Court enjoin Defendant, its agents and employees, and any others acting in concert with it, from infringing U.S. Patent No. 6,541,261 B1;

2. That this Court enjoin Defendant, its agents and employees, and any others acting in concert with it, from infringing U.S. Patent No. 6,783,733 B2

3. That this Court award CytoLogix its damages resulting from Defendant's infringement;

4. That this Court award CytoLogix increased damages as a result of Defendants' willful misconduct;

5. That this Court declare that this case is an exceptional case pursuant to 35 U.S.C. § 285; and

6. That this Court grant CytoLogix its costs and attorneys fees and such other relief as is just.

JURY DEMAND

CytoLogix demands trial by jury.

FISH & RICHARDSON P.C.

Date: December 28, 2005

By: /s/ Michael E. Zeliger  
Michael E. Zeliger (BBO # 633654)  
Janet Lee (pro hac vice)  
225 Franklin Street  
Boston, MA 02110-2804  
(617) 542-5070 Telephone  
(617) 542-8906 Facsimile

Attorneys for Plaintiff  
CytoLogix Corporation